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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

ZAMBIA

1. The Committee considered the second periodic report of Zambia (CCPR/C/63/Add.3 and HRI/CORE/1/Add.22/Rev.1) at its 1487th to 1489th meetings (see CCPR/C/SR.1487-1489), on 26 and 27 March 1996. At its 1498th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the submission of the second periodic report and expresses its appreciation to the State party for the resumption of a constructive dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative norms in Zambia, it largely fails to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation. The Committee appreciates the presence of a delegation which provided helpful information to the Committee in addressing its questions and thus allowed it to obtain a somewhat clearer view of the overall situation in the State party. Unfortunately, the delegation did not include experts on all the issues dealt with in the report or on issues usually raised by the Committee during the consideration of the reports of States parties.

B. Factors and difficulties affecting the implementation of the Covenant

3. The remnants of certain traditions and customs constitute an obstacle to the effective implementation of the Covenant, particularly with regard to equality between men and women.

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C. Positive aspects

4. The Committee recognizes that the State party has begun amending its domestic legislation to bring it into line with the Covenant.

5. The Committee welcomes the introduction of a multi-party system of government as well as efforts undertaken by the State party to strengthen democratic institutions and the multi-party system. In that regard, it takes note of the establishment of a Commission to review the Constitution and of the adoption of measures designed to strengthen the rule of law. It further welcomes the setting up of the Munyama Human Rights Commission.

6. The Committee appreciates the efforts made by the Government to implement views adopted by the Committee under the Optional Protocol.

D. Principal subjects of concern

7. The Committee notes with concern that steps still remain to be taken to harmonize the Constitution with the Covenant and to develop democratic institutions and human rights machinery for better implementation of the Covenant.

8. The Committee also notes with concern that the equality clause in section 11 of the Constitution and the non-discrimination clause in section 23 do not apply to non-citizens and that there are other exemptions in section 23 which are not compatible with articles 3 and 26 of the Covenant.

9. The Committee expresses its concern over the situation of women who, despite some advances, continue to be de jure and de facto the object of discrimination, particularly as regards education, access to work and participation in the conduct of public affairs. The application of customary laws in matters of personal status, marriage, divorce and inheritance rights reinforces outdated attitudes concerning the role and status of women. The Committee also regrets the lack of measures to adequately address problems raised with regard to violence against women and the high maternal mortality resulting from abortion.

10. Section 43 of the Constitution, which restricts the right of individuals to pursue civil remedies against the President in the courts for anything done in his private capacity, is incompatible with the provisions of article 14 of the Covenant.

11. The Committee regrets that the proclamation of a state of emergency in March 1993 was not notified to the Secretary-General in accordance with article 4, paragraph 3, of the Covenant. The Committee also regrets the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly sections 31 and 32 of the Constitution, which would permit derogations contravening the State party's obligations under article 4, paragraph 2, of the Covenant. The Committee is also concerned that the derogation of rights permissible under section 25 of the Constitution goes far beyond that permissible under article 4, paragraph 2, of the Covenant.

12. The Committee is concerned that the rights contained in articles 7, 9 and 10 of the Covenant are not fully respected. The Committee is concerned in particular that torture and ill-treatment of persons deprived of their liberty continue to be reported and that abuses allegedly committed by police officers and members of security forces are not duly investigated by an independent body.

13. The Committee welcomes the establishment of the National Committee on Penal Reform. It is, however, greatly concerned at the poor conditions in places of detention and the lack of implementation of guarantees in article 10 of the Covenant as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

14. The Committee is concerned that three journalists were found to be in "gross contempt of the National Assembly" without any of the procedural guarantees of fair trial provided for by articles 9 and 14 of the Covenant and that two of these journalists were held in indefinite detention before release, contrary to the provisions of article 9 of the Covenant and even contrary to section 13 of the Constitution and sections 27 and 28 (3) of The National Assembly (Powers and Privileges) Act.

15. The Committee is also concerned by reports of arrests and charges against journalists for the publication of newspaper articles. Use of the criminal process to ensure accountability of the press for the veracity of its reports is not compatible with article 19 of the Covenant. Robust and even harsh criticism of government figures is an essential part of free speech in a democratic country.

16. The Committee is concerned that the proposals made by the Constitutional Review Committee in regard to appointment of judges of the Supreme Court by the President after their retirement and the removal of Supreme Court judges by the President, subject only to ratification by the National Assembly without any safeguard or inquiry by an independent judicial tribunal, are incompatible with the independence of the judiciary and run counter to article 14 of the Covenant.

17. The Committee is also concerned that no measures are taken that pregnancy or parenthood do not affect the continuous education of children.

18. The requirement to sing the national anthem and salute the flag as a condition of attending a State school, despite conscientious objection, appears to be an unreasonable requirement and to be incompatible with articles 18 and 24 of the Covenant.

19. The Committee is further concerned that provisions in the Penal Code which fix eight years as the age of criminal responsibility and which permit children to be charged jointly with adults to be tried in the ordinary criminal courts appear to be incompatible with articles 14, paragraph 4, and 24 of the Covenant.

E. Suggestions and recommendations

20. The Committee strongly encourages the Government to undertake a thorough review of the legal framework for the protection of human rights in the State

party to ensure full conformity with the Covenant. It recommends that appropriate institutions be set up in order to effectively promote the observance of human rights.

21. The Committee recommends that the State party review its laws and make appropriate amendments, including the abrogation of subsections 23 (4) (c) and (d) of the Constitution, to ensure full legal and de facto equality for women in all aspects of social and economic relationships and, particularly in the laws governing the status of women, women's rights and obligations in marriage. It emphasizes the need for the authorities to increase efforts to prevent and eliminate persisting discriminatory attitudes and prejudices against women. Comprehensive anti-discriminatory laws covering both the private and the public spheres should be introduced as well as, where appropriate, affirmative action measures.

22. The Committee recommends that the authorities adopt legislation to bring the domestic legal regime, including section 25 of the Constitution, into harmony with the State party's obligations under article 4 of the Covenant.

23. The Committee recommends that, in view of the current debate referred to in paragraph 18 of the report and the fact that there have been no executions since 1988, the State party consider taking measures for the abolition of the death penalty and the ratification of or accession to the Second Optional Protocol to the Covenant.

24. The Committee urges the authorities to take the necessary steps to ensure that torture, ill-treatment and illegal detention do not occur and that any such cases are duly investigated by an independent authority in order to bring before the courts those accused of having committed such acts and to punish them if found guilty. The Committee also recommends that the report of the Munyama Human Rights Commission be published as soon as possible and that the State party move for the reform of penal law and practice.

25. The Committee recommends that steps be taken in law and in practice to implement fully the provisions of article 10 of the Covenant as well as United Nations Standard Minimum Rules for the Treatment of Prisoners and to make relevant laws and regulations governing the treatment of persons deprived of their liberty known and accessible to the prisoners themselves as well as the police, armed forces, prison personnel and other persons responsible for holding interrogation. Urgent steps should be taken to reduce the number of prisoners through the review of sentences, by speeding up trials or otherwise.

26. The Committee recommends the abolition of imprisonment for civil debt, in compliance with article 11 of the Covenant.

27. Corporal punishment should be abolished, in accordance with article 7 of the Covenant.

28. The Committee recommends that mere criticism by journalists of government officials should not be made a criminal offence.

29. The Committee welcomes the release under court order of two journalists who were detained after being found to be in contempt of the National Assembly. It trusts that the third journalist censured by Parliament will not be detained. It urges that in future all cases in which people are suspected of contempt of Parliament be dealt with by the courts in a manner consistent with all requirements of the Covenant.

30. The Committee calls upon the State party to prepare its third periodic report in compliance with the Committee's guidelines for the preparation of State party reports (CCPR/20/Rev.1). The report should in particular include detailed information on the extent to which each right is enjoyed in practice, and refer to specific factors and difficulties that might impede its application. In undertaking this obligation, the State party may wish to avail itself of the Advisory Services and Technical Assistance Programme of the United Nations Centre for Human Rights.

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Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

GUATEMALA

1. The Committee considered the initial report of Guatemala (CCPR/C/81/Add.7 and HRI/CORE/1/Add.47) at its 1486th, 1488th and 1489th meetings, on 26 and 28 March 1996 (see CCPR/C/SR.1486, 1488 and 1489). Subsequently, at its 1499th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the initial report submitted by the State party and also welcomes the delegation's willingness to engage in a frank and fruitful dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative norms in Guatemala, it largely fails to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation which the delegation frankly admitted, a fact which the Committee appreciates. The Committee appreciated the presence of a competent delegation which provided helpful information to the Committee in addressing its questions and thus allowed it to obtain a clearer view of the overall human rights situation in the State party.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that Guatemala continues to suffer from a long civil war, which has devastated the country for more than four decades. In the context of such conflict, gross and massive human rights violations have

occurred and, although some steps have been taken in recent years to achieve peace, the conflicting parties have not yet negotiated an end to the war. The situation of armed conflict which has prevailed since Guatemala ratified the Covenant has given rise to serious violations of human rights. The armed conflict has also subjected civilian governmental authority to the power of the military, which is incompatible with the legitimate functions of freely elected authorities and the purpose of elections.

4. The Committee also notes that various segments of the population, particularly persons who are or were members of the armed forces or government officials, or who hold economic power, continue to take advantage of a climate of impunity resulting in the most serious human rights violations and has been an obstacle to the rule of law in the State party.

5. The Committee further notes that social and economic disparities are all-pervasive in the country. High levels of poverty and illiteracy, lack of opportunities, and discrimination against the indigenous population, women and the poor contribute to widespread violation of human rights.

C. Positive aspects

6. The Committee expresses its satisfaction with positive changes for the protection of human rights since the signing of the Central American Peace Accords on 7 August 1987. It notes that some progress has been made towards entering a dialogue that would hopefully put an end to the situation of armed conflict and lead to the establishment of the rule of law. In that connection, the Committee notes the signing on 29 March 1994 of the Comprehensive Agreement on Human Rights, and consequently the establishment of the United Nations Mission in Guatemala (MINUGUA) and of its human rights component, as well as the conclusion of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict on 23 June 1994.

7. The Committee welcomes the current Government's intentions to achieve a firm and lasting peace in Guatemala and its willingness to put an end to serious violations of human rights and to create a better political, constitutional and legal framework towards the full implementation of the rights enshrined in the Covenant. The Committee also welcomes the termination of offensive military actions decreed by the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the cessation of all counter-insurgency operations by the Government decreed by President Arzú. The Committee further welcomes the suppression of the obligatory military service, which will aid in the demilitarization of the country.

8. In that respect, the Committee welcomes positive steps taken by the recently elected Government, such as the dismissal of certain top officials of the armed forces and the reopening of a dialogue with the armed opposition on 22 February 1996. It also welcomes the elimination of the post of the Military Commissioner (Comisionado Militar) and the demobilization of more than 14,000 persons from the security forces.

9. The Committee welcomes Guatemala's ratification of the Covenant in 1992, as well as the adoption by Congress of legislation approving ratification of the Optional Protocol. It welcomes the indication made by the representatives of the State party that Guatemala will deposit its instrument of ratification to the Optional Protocol within the next few days.

10. The Committee welcomes the establishment of the Office of the Human Rights Procurator and the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH). The Committee also welcomes the legal reform undertaken in some areas, notably constitutional amendments to bring Guatemalan law in conformity with international human rights standards, the adoption of a new Code of Criminal Procedure and the enactment of a new Law on the Prosecutor's Office (Ley Orgánica del Ministerio Público), aiming at the investigation and punishment of human rights violations.

11. The Committee welcomes recent legislation making torture, forced disappearances and extra-judicial executions punishable offences in Guatemala. It also welcomes recent developments to curb the power of military tribunals and to bring cases of human rights violations by members of the army and the security forces under the jurisdiction of civil courts.

12. The Committee welcomes the recent elections and the fact that after a failed coup d'état the authority vested in freely elected officials was strengthened.

D. Principal subjects of concern

13. The Committee is concerned that the absence of a State policy for combating impunity has prevented the identification, trial and punishment if found guilty of those responsible, and the payment of compensation to the victims. The Committee is concerned that the delays and failures of the process of law, and the non-compliance by the police with court decisions and orders has heightened the public perception that justice cannot be obtained.

14. The Committee expresses concern that human rights violations continue to occur in Guatemala, particularly serious and systematic violations of the right to life and liberty and security of the person carried out by paramilitary groups, many of them linked to the State's security forces.

15. The Committee is concerned at the extension of the death penalty in a way which might not be in conformity with the requirements of article 6, paragraph 2, of the Covenant.

16. The Committee notes with alarm the information received of cases of summary executions, disappearances, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups or individuals (notably the Civil Self-Defence Patrols (PACs) and former military commissioners).

17. The Committee is concerned at the cases of violence against the repatriated population, which has resulted in extrajudicial executions, disappearances and torture or ill-treatment. In connection with this, it is concerned at the conduct of PAC members who have availed themselves of their position to harass repatriated persons.

18. The Committee notes with concern that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties are subject to intimidation, death threats and even murder, thus facing serious obstacles in the legitimate performance of their duties. The Committee deplores that effective measures have not yet been taken to prevent the recurrence of such acts.

19. The Committee is concerned that judges are subjected to supervision of an Executive Branch body which may affect their independence.

20. The Committee deplores the situation of street children in Guatemala, who are subjected to serious violations of their human rights under the Covenant, particularly their right to life and not to be subjected to torture and ill-treatment. The Committee is concerned at the intensity of abuse against street children by persons of authority, including the public and private police.

21. The Committee is concerned at customs and traditions prevailing in Guatemala which discriminate against women. It is particularly concerned at the statement by the delegation that State institutions are frequently not in a position to address the problems affecting the female population. The Committee is especially concerned at violence within the family which affects not only women but also children.

22. The Committee expresses concern at the specific impact of the prevailing violence within the country on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. In that connection, the Committee is concerned that despite the signing of an accord between the Government and the armed opposition on 31 March 1995 on the identity and rights of the indigenous population, the law on indigenous communities required by article 17 of the Constitution has not yet been enacted.

23. The Committee is concerned at the curtailment of the right of association, especially within the workplace. In this sense, it is concerned at the high levels of violence against trade union members, at the intimidation by agents of offshore operations and at the high number of cases of strikes that are deemed illegal.

E. Suggestions and recommendations

24. The Committee strongly encourages the Government to undertake a thorough review of the legal framework for the protection of human rights in the State party to ensure full conformity with the Covenant.

25. The Committee urges the Guatemalan Government to continue working in the process of national reconciliation which may bring lasting peace to Guatemalan society. The Guatemalan Government should take all pertinent measures to avoid cases of impunity and, especially, to allow the victims of human rights violations to find out the truth about those acts, to know who the perpetrators of such acts are and to obtain appropriate compensation.

26. The Committee recommends that the State party endeavour to bring to justice perpetrators of human rights abuses, notwithstanding the positions they may have held, in accordance with the Covenant. It urges the State party to investigate allegations of human rights violations, past and present, to act on the findings of its investigations, to bring to justice those suspected, to punish the perpetrators and to compensate the victims of such acts. Persons found guilty of having committed human rights violations should be expelled from the armed or security forces and punished accordingly.

27. The Committee recommends that the Office of the Human Rights Procurator and the presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) be strengthened, with regard both to resources and to jurisdiction, in order to ensure that they may effectively carry out their responsibilities.

28. The Committee recommends that all necessary measures be taken to ensure that human rights are respected by members of the army, the security forces and the police. It urges continuing vigorous action to ensure that persons responsible for human rights abuses not re-enter the police, army or security forces. Immediate steps should be taken to disband paramilitary and other groups, particularly the Civil Self-Defence Patrols (PACs).

29. The Committee recommends that an educational programme be devised so that all segments of the population, in particular members of the army, the security forces and the police, as well as present and former members of the Civil Self-Defence Patrols, develop a culture of tolerance and respect for human rights and human dignity.

30. The Committee urges the Government to take all necessary steps, including protective and pre-emptive measures, to ensure that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties, be enabled to perform their duties without intimidation of any sort.

31. The Committee recommends that the independence of the Judiciary be ensured and a law regulating it be enacted.

32. The Committee recommends that appropriate stringent measures be taken to ensure the fullest possible implementation of article 24 of the Covenant, including adequate protection of street children. Stern measures must be taken to punish those found guilty of committing any kind of violence against minors, especially against those who endure hard living conditions.

33. The Committee also urges that violence (especially within the home) and acts of discrimination against women (such as sexual harassment in the workplace) be established as punishable crimes.

34. The Committee recommends that further measures be taken to ensure that members of indigenous groups be protected against the prevailing violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity, language and religion. The legislation on indigenous communities should be enacted without delay.

35. The Committee urges that respect for human rights be institutionalized at all levels of the government and recognized as an essential element of the process of national reconciliation and reconstruction. To that end, the Committee recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.

36. The Committee urges the Guatemalan Government to restrict the application of the death penalty to those crimes which might be considered most serious, in accordance with article 6, paragraph 2, of the Covenant.

37. The Committee urges that MINUGUA continue its activities in the country until it certifies that it has fully discharged its mandate relating to human rights.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Preliminary concluding observations of the
Human Rights Committee

NIGERIA

A. Introduction

1. Deeply concerned by recent executions after trials that were not in conformity with provisions of the Covenant, the Human Rights Committee on 29 November 1995, acting through its Chairman, requested the Government of Nigeria to submit its initial report without further delay for consideration by the Committee at its fifty-sixth session in March/April 1996 and, in any event, to submit by 31 January 1996 a report, in summary form if necessary, relating to the application of articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights in the current situation.

2. The Committee appreciates the decision of the Government of Nigeria to submit its initial report (CCPR/C/92/Add.1) in time for consideration at its fifty-sixth session as scheduled.

3. Given the importance of the report in the current situation and the constraints of the Nigerian delegation in being available for only one day, the Committee decided to divide the examination of the report into two parts, namely, the first part on Articles 6, 7, 9 and 14, and the second part on the remaining articles of the Covenant.

4. The first part was considered at the 1494th and 1495th meetings of the Committee held on 1 April 1996 (see CCPR/C/SR.1494 and 1495). Further consideration of the report was adjourned to the fifty-seventh session of the Committee (Geneva, July 1996).

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5. In the light of the examination of the first part of the report and the observations made by members of the Committee, the Committee, at its 1499th meeting, on 3 March 1996, adopted the following preliminary observations and urgent recommendations:

B. Principal concerns in respect of articles 6, 7, 9 and 14

6. The Committee noted fundamental inconsistencies between the obligations undertaken by Nigeria under the Covenant to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria.

7. In particular, the incommunicado detention for an indefinite period and the suppression of habeas corpus constitute violations of article 9 of the Covenant.

8. The establishment by presidential decree of several types of special tribunals, including their composition and rules of procedure which exclude the free choice of a lawyer, and the absence of any provisions for appeals, constitute violations of rights provided under article 14 of the Covenant as well as violations of article 6, paragraph 1, and article 6, paragraph 2, of the Covenant when a sentence of death is pronounced.

9. The failure to respect these guarantees has led to the arbitrary deprivation of life of Mr. Ken Saro Wiwa and the other accused.

10. There would not appear to have been any serious investigations into allegations of torture, ill-treatment or conditions of detention which raise serious issues under article 7 of the Covenant.

C. Urgent recommendations

11. The Committee, in particular, recommends that all the decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts (such as State Security (Detention of Persons) Decree No. 2 of 1984, the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994, Civil Disturbances (Special Tribunal) Decree No. 2 of 1987, Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986) which violate some of the basic rights under the Covenant, be abrogated and that any trials before such special tribunals be immediately suspended.

12. The Committee recommends that urgent steps be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided in article 14 (1), (2) and (3) and to have their conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant.

13. The Committee requests the Government of Nigeria to inform the Committee at the resumed consideration of the report in July 1996 of the steps it has taken to implement the above recommendations.